



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 6, 1997

Mr. Jason C. Marshall
Nichols, Jackson, Dillard, Hager & Smith
1800 Lincoln Plaza, 500 North Akard
Dallas, Texas 75201

OR97-0275

Dear Mr. Marshall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103598.

The City of Coppell (the "city") received a request for a specific document prepared by Michael Cantrell for a professional development course. You claim that the requested document is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the document at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

You inform this office that the city is currently involved in litigation, *Cantrell v. Coppell, et al.*, No. 94-50280-367 (367th Dist. Ct., Denton County, Tex., 1994). We note, however, that the document at issue was obtained from the opposing party to the litigation. Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a). The city must release the requested document. See Gov't Code 552.353 (a),(b)(3), (c) (failure or refusal of officer of public information to provide access to or copying of public information may be criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 103598

Enclosures: Submitted document

cc: Mr. Arthur H. Kwast
P.O. Box 1397
Coppell, Texas 75019-1397
(w/o enclosures)